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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/041,129	07/23/2003	Ram K. Ramesh	D-42941-02	7079
7590	02/25/2004			
Cryovac, Inc. P.O. Box 464 Duncan, SC 29334			EXAMINER GERRITY, STEPHEN FRANCIS	
			ART UNIT	PAPER NUMBER
			3721	
DATE MAILED: 02/25/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/041,129

Applicant(s)

RAMESH ET AL.

Examiner

Stephen F. Gerrity

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>01/08/02</u> | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Response to Preliminary Amendment

1. Receipt is acknowledged of a preliminary amendment, filed 8 January 2002, which has been placed of record and entered in the file.

Information Disclosure Statement

2. Receipt is acknowledged of an Information Disclosure Statement, filed 8 January 2002, which has been placed of record in the file. An initialed, signed and dated copy of the PTO-1449 form is attached to this Office action.

Note: that the reference "ASTM D-1505 ..." has been crossed through on sheet two of the PTO-1449 forms because a copy of this reference could not be found in the parent application. Applicant is respectfully requested to resubmit this reference in a supplemental IDS as it is not readily available to the examiner.

Claim Objections

3. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively

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beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 40-55 have been renumbered as claims 28-43. ***Drawings***

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the bags being stacked on top of one another (claims 22, 26 and 27) when being (heat-)sealed, the rotary chamber vacuum machine (claim 25) and the evacuating of the first and second bags (claim 28) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

5. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

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Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 22-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admitted prior art (**AAPA**) in view of Bauer et al. (**US 5,837,358**).

Applicant admits -- AAPA -- that the method of placing a first product in a flexible bag, placing a second product in a flexible bag, stacking one bag on top of the other, and heat-sealing the first bag and second bag -- see page 2, lines 5-15. Applicant's admitted prior art meets all of the claimed subject matter with the exception of the composition of the bag, that is, the particular layers of the bag. The Bauer et al. reference discloses a bag used in a similar process which meets the claimed structure of the bag, that is, a first layer of polyolefin, a second layer of polyolefin, a third layer of polyester, and a fourth layer of polyester. It would have been obvious to a person having ordinary skill in the art, at the

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time applicant's invention was made, to have modified the method set forth in AAPA by having substituted the bag structure disclosed in Bauer et al. for the bag disclosed in AAPA, because the substitution of one old and well known bag structure for another old and well known bag structure is routine in the art, where as here there is presently no evidence that would reasonable convey that some result would be achieved by modification of the old and well known method set forth in AAPA that would be unexpected or contradict the expected result of AAPA. As to the polyester of the third layer having a melting point of from about 130°C to about 260°C, the now modified AAPA does not disclose this limitation, and to the other composition limitations in the claims not disclosed by the now modified AAPA. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have employed a polyester as the third layer having a melting point of from about 130°C to about 260°C, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Additionally, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges

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involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Also, the selection of a known material based on its suitability for its intended use supported a *prima facie* obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945). See also *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references cited on the attached form (PTO-892) are cited to show methods of packaging and bags used in packaging. All are cited as being of interest and to show the state of the prior art.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Stephen F. Gerrity** whose telephone number is (703) 308-1279. The examiner can normally be reached on **Monday - Friday** from **5:30 - 2:00**.

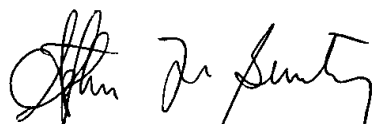
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Rinaldi Rada**, whose telephone number is (703) 308-2187, may be contacted.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the TC 3700 receptionist whose telephone number is (703) 308-1148.



Stephen F. Gerrity
Primary Examiner
Art Unit 3721

23 February 2004